

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RICHARD N. BATSON and BEVERLY J.  
JONES-BATSON,  
Plaintiffs,  
v.  
DEUTSCHE BANK TRUST AMERICAS,  
Indentured Trustee for SASTA 2005-3  
Mortgage Backed Assets 2005-3;  
MORGAN STANLEY FINANCIAL;  
OCWEN MORTGAGE SERVICES,  
NORTH CASCADE TRUSTEE  
SERVICES; DOES 1-10; and ALL  
OTHERS WITH SECURED INTEREST,  
Defendants.

No. 2:15-cv-00193-SAB

**ORDER GRANTING IN PART  
AND DENYING IN PART  
MOTIONS TO DISMISS**

***Introduction***

Before the Court is Defendants' Deutsche Bank Trust Company Americas as Indenture Trustee for SASTA 2005-3 Mortgage Backed Assets 2005-3 ("Deutsche Bank") and Ocwen Loan Servicing, LLC ("Ocwen")'s Motion to Dismiss, ECF No. 4, and Defendant Morgan Stanley's Motion to Dismiss for Failure to State a Claim, ECF No. 15. The Court has reviewed the motions, and the

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1 responses of pro se Plaintiffs Richard N. Batson and Beverly J. Jones-Batson, as  
2 well as the related replies, filings, and documents, including those submitted for  
3 judicial notice. For the reasons discussed below, the Court **grants in part and**  
4 **denies in part** the motion of Defendants' Deutsche Bank and Ocwen, ECF No. 4,  
5 and **grants** Defendant Morgan Stanely's motion, ECF No. 15.

6 ***I. Material Facts***

7 These facts, drawn from the Plaintiffs' complaint, are assumed true. On  
8 April 16, 2005, the Batsons entered an agreement to purchase the property  
9 contested in the instant action, 12910 East Sinto Avenue, Spokane Valley  
10 Washington 99216. The Plaintiffs executed a promissory note to finance the home  
11 purchase, and the deed of trust was executed on July 3, 2005. The Plaintiffs  
12 received their first payment statement in late July 2005. The amount due differed  
13 "with no explanation, [from the] amount previously outlined." ECF No. 1-3 at  
14 32:18-19. The Plaintiffs then engaged in a five year effort, from July 2005 to  
15 October 2010, to "correct, clear up, and eventually end association" with Saxon  
16 Mortgage, the original lender. *Id.* at 32:22-23. Once Saxon Mortgage transferred  
17 the deed, the Batsons attempted to similarly contest the terms of their loan with  
18 Ocwen, from March 2011 to October 2013. At some point, the Batsons defaulted  
19 on their loan payments.

20 The Batsons unsuccessfully attempted to secure information about their loan  
21 from Saxon Mortgage, Ocwen, and Deutsche Bank from March 2011 through July  
22 2013. After sending a demand letter in July 2014, the Batsons did not receive word  
23 from the Defendants until January 2015, when Ocwen began sending letters  
24 "claiming debt and attempting debt collection by way of invoices for reinstated  
25 loan, required insurance and threats of foreclosure." *Id.* at 33:13-16. A Notice of  
26 Trustee Sale was posted on the property on March 28, 2015, which was filed on  
27 June 1, 2015 with the Spokane County Auditor.

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1 The Plaintiffs' filed a complaint on June 26, 2015 in Spokane County  
 2 Superior Court. ECF No. 1-3. The complaint stated causes of action for Wrongful  
 3 Foreclosure, Intent to Defraud, Wrongful Claim to Debt Secured by Deed,  
 4 Violation of Consumer Rights, and Violation of Plaintiffs' Civil Rights.<sup>1</sup> The case  
 5 was removed to this Court's jurisdiction on July 24, 2015, and Plaintiffs moved  
 6 for a preliminary injunction on August 21, 2015, to halt the trustee's sale.

## 7 *II. Standard*

8 A motion to dismiss for failure to state a claim may be granted only when  
 9 the plaintiff's allegations, taken as true, demonstrate the plaintiff is not entitled to  
 10 relief as a matter of law. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Mendocino*  
 11 *Environ. Cntr. v. Mendocino Cnty.*, 14 F.3d 457, 460 (9th Cir. 1994). The Court  
 12 accepts all allegations in the complaint as true, and draws reasonable inferences in  
 13 favor of the plaintiff. *Hays v. City of Spokane*, No. CV-11-0010-LRS, 2011 WL  
 14 4852311, at \*2 (E.D. Wash. Oct. 13, 2011). Furthermore, the complaint must be  
 15 construed in the light most favorable to the plaintiff. *Parks Schl. of Business, Inc.*  
 16 *v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). However, the Court need not  
 17 take legal conclusions as factual allegations. *Iqbal*, 556 U.S. at 678. Overall, the  
 18 claims for relief must be plausible on their face. *Id.*

## 19 *III. Judicial Notice*

20 The Court first considers Defendants' Request for Judicial Notice, ECF  
 21 No. 5. A document not attached to a complaint may be incorporated by reference  
 22 into a complaint if the plaintiff extensively refers to the document, or if the  
 23 document forms the basis of the plaintiff's claim. *United States v. Ritchie*, 342  
 24 F.3d 903, 908 (9th Cir. 2003). Defendants may offer such documents in a Rule  
 25 12(b)(6) motion to dismiss and the Court may consider such documents as part of  
 26 the complaint and assume them true. *Id.* Additionally, the Court can take judicial

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27 <sup>1</sup> These claims cite large chapters of the Revised Code of Washington and entire titles of the United States Code. The  
 28 Court has liberally construed the pro se complaint, "which must be held to less stringent standards than formal  
 pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

1 notice of facts that “can be accurately and readily determined from sources whose  
2 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2).

3 Defendants request the Court take judicial notice of several documents  
4 related to the Plaintiffs claims in this case: the Deed of Trust, recorded in Spokane  
5 County, Document No. 5240753; the Appointment of Successor Trustee, recorded  
6 in Spokane County, Document No. 6039643; the Appointment of Successor  
7 Trustee, recorded in Spokane County, Document No. 6399575; and the Notice of  
8 Trustee’s Sale, recorded in Spokane County, Document No. 6402728. Plaintiffs  
9 reference these documents in the complaint, and they make up the basis of their  
10 claims. Additionally, they are public records and their accuracy cannot reasonably  
11 be questioned. *Justo v. Charter Capital Corp.*, No. 5:11-CV-00670 EJD, 2012 WL  
12 359738, at \*1 n.1 (N.D. Cal. Feb. 2, 2012). The Court therefore takes judicial  
13 notice of the above documents, and proceeds to consider the instant motions as  
14 Rule 12(b)(6) motions to dismiss without converting them into motions for  
15 summary judgment. *Ritchie*, 342 F.3d at 909.

#### 16 ***IV. Deutsche Bank and Ocwen’s Motion to Dismiss, ECF No. 4***

17 The Court proceeds to discuss each of Plaintiffs’ claims in turn. Deutsche  
18 Bank and Ocwen’s motion, ECF No. 4, seeks to dismiss all of Plaintiffs’ claims.

##### 19 ***A. Wrongful Foreclosure (Washington Deed of Trust Act and Consumer*** 20 ***Protection Act)***

21 The Deed of Trust Act provides the only method for enjoining or restraining  
22 a nonjudicial foreclosure in Washington State. *Andrews v. Countrywide Bank*, No.  
23 C15-0428JLR, 2015 WL 1487093, at \*2 (W.D. Wash. Apr. 1, 2015). A court can  
24 enjoin the trustee’s sale on any proper legal or equitable ground. RCW  
25 61.24.130(1). But Plaintiffs do not plausibly set forth any specific provisions of  
26 the Deed of Trust Act that Defendants violated. *Moon v. GMAC Mortg. Corp.*, No.  
27 C08-969Z, 2009 WL 3185596, at \*6 (W.D. Wash. Oct. 2, 2009). The documents  
28 provided by Defendants, and taken under judicial notice and assumed true,

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1 indicate that the nonjudicial foreclosure process was followed. Given Plaintiffs’  
2 significant default of payments, there is no basis to restrain the foreclosure sale.

3 Additionally, any damages claim for wrongful foreclosure under the Deed  
4 of Trust Act must fail as a matter of law. Courts agreed that no damages can occur  
5 absent a foreclosure sale. *Pfau v. Wash. Mutual, Inc.*, No CV-08-00142-JLQ, 2009  
6 WL 484448, at \*12 (E.D. Wash. Feb. 24, 2009). And though the Washington  
7 Supreme Court has held that violations of the Deed of Trust Act may provide an  
8 action under the Consumer Protection Act in the absence of a completed  
9 foreclosure sale, *Frias v. Asset Foreclosure Servs., Inc.*, 181 Wn. 2d 412, 429  
10 (2014), as above, the Plaintiffs have not plausibly alleged a violation of the Deed  
11 of Trust Act, given the deed and loan documents presented by Defendants. Thus  
12 Plaintiffs’ claims under the Deed of Trust Act, Violation of Consumer Rights  
13 (construed as the Consumer Protection Act), and Wrongful Claim to Debt Secured  
14 by Deed,<sup>2</sup> are **dismissed**.

### 15 *B. Fraud Claims*

16 A Washington fraud claim must show: “(1) a representation of an existing  
17 fact; (2) the fact is material; (3) the fact is false; (4) the defendant knew the fact  
18 was false or was ignorant of its truth; (5) the defendant intended the plaintiff to act  
19 on the fact; (6) the plaintiff did not know the fact was false; (7) the plaintiff relied  
20 on the truth of the fact; (8) the plaintiff had a right to rely on it; and (9) the  
21 plaintiff had damages.” *Baddeley v. Seek*, 138 Wash. App. 333, 338-39 (2007).

22 In the Ninth Circuit, negligent misrepresentation and circumstances  
23 constituting fraud must be stated with particularity. Fed. R. Civ. P. 9(b); *Brophy v.*

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24 <sup>2</sup> There is no cause of action for Wrongful Claim to Debt Secured by Deed in Washington State. The Court notes that  
25 any plausible cause of action this claim could be construed as has been time-barred, given the fact that Plaintiffs  
26 admit knowledge of alleged problems in the loan documents dating to 2005. *Life Church v. GMAC Mortgage Corp.*,  
27 No. C06-651RSM, 2007 WL 1185861, at \*1 (W.D. Wash. Apr. 20, 2007) (Plaintiff aware of problems underlying  
28 claims where he contacted the loan servicing company about it); *Brown v. Household Realty Corp.*, 146 Wash. App.  
157, 164, 189 P.3d 233, 236 (2008) (“[A] person is not required to have knowledge of the existence of a legal cause  
of action, but merely knowledge of the facts necessary to establish the elements of the claim.”). *See also* RCW  
4.16.040 (statute of limitations for written contract is six years); RCW 19.86.120 (four year statute of limitations for  
Consumer Protection Act).

1 *JPMorgan Chase Bank Nat. Ass'n*, No. 13-CV-0293-TOR, 2013 WL 6273583, at  
2 \*2 (E.D. Wash. Dec. 4, 2013). The Plaintiff must allege “the time, place, and  
3 specific content of the false representations as well as the identities of the parties  
4 to the misrepresentation.” *Schreiber Distributing Co. v. Serv-Well Furniture Co.,*  
5 *Inc.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

6 The Plaintiffs have not sufficiently alleged the circumstances constituting  
7 fraud, let alone all nine elements. They generally allege that the documents are  
8 fraudulent, and that the loans presented are not the ones they signed. They also  
9 state that at one point that the assignee’s name is in a different font from the rest of  
10 the assignment. At no point do the Plaintiffs ever state what is fraudulent about the  
11 documents. The allegation that something in the document is fraudulent is the sort  
12 of conclusory allegation that does not reach the Rule 9(b) standard.

13 Additionally, if the applicable statute of limitations time-bars a claim, it is  
14 properly dismissed for failure to state a claim. *Jones v. Bock*, 549 U.S. 199, 215  
15 (2007). The statute of limitations for fraud in Washington is three years after the  
16 discovery of the fraudulent conduct. RCW 4.16.080(4). Since the Plaintiffs allege  
17 they were aware of the alleged fraud in the loan documentation in 2005, no fraud  
18 claims surrounding the loans can survive the statute of limitations. This also  
19 eliminates any fraud claims based on the assignment of the deed of trust, which  
20 occurred on October 11, 2011. ECF No. 30 at 4. Any fraud claim after that point  
21 still fails, as the Plaintiffs have not shown justifiable reliance, or the specific  
22 falsehoods they relied on. For the above reasons, the fraud claims are **dismissed**.

### 23 *1. Challenge to Assignment*

24 Plaintiffs cannot prevail on any claim behind the assignment. Borrowers  
25 lack the standing to challenge assignments, even fraudulent ones, unless the  
26 borrower shows a “genuine risk of paying the same debt twice.” *Borowski v. BNC*  
27 *Mortgage, Inc.*, No. C12–5867 RJB, 2013 WL 4522253, at \*5 (W.D. Wash. Aug.  
28 27, 2013); *Brodie v. Nw. Trustee Servs., Inc.*, No. 12-CV-0469-TOR, 2012 WL



6192723, at \*2-3 (E.D. Wash. Dec. 12, 2012). There is no indication in the filings of a risk of double-payment, and the assignment is legitimate. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1042 (9th Cir. 2011) (plaintiffs unable to show a potentially unlawful designation of beneficiary caused injury by affecting terms of loan, ability to repay, or obligations as borrowers). This claim is thus **dismissed**.

### *C. Civil Rights Claims*

Plaintiffs allege civil rights violations. Since there are no state actors or acts at issue here, there can be no liability for civil rights violations. *Cummings v. Guardianship Servs. of Seattle*, 128 Wash. App. 742, 758 (2008). The Ninth Circuit has explicitly held that a lawful trustee's sale is not under color of state law for civil rights purposes. *Brophy v. JPMorgan Chase Bank Nat'l Ass'n*, 2013 WL 6273583, at \*3 (E.D. Wash. Dec. 4, 2013) (citing *Apao v. Bank of New York*, 324 F.3d 1091, 1093-95 (9th Cir. 2003)). The civil rights claim is **dismissed** as a matter of law.

### *D. Review of Potential Federal Statutory Claims*

In an abundance of caution in litigation involving pro se plaintiffs, the Court next reviews potential claims under applicable federal statutes.

#### *1. Truth in Lending Act ("TILA") Claim*

"A TILA violation occurs at the time the loan documents are signed." *Vatomanyuk v. Quality Loan Serv. Corp. of Washington*, 699 F. Supp. 2d 1242, 1244-45 (W.D. Wash. 2010) (citing *Meyer v. Ameriquest Mortgage Co.*, 342 F.3d 899, 902 (9th Cir. 2003)). For mortgage-related violations, a three-year statute of limitations applies. 15 U.S.C. § 1640(e). Since the loan documents were signed in 2005, and Plaintiffs allege knowledge of any alleged fraud or misrepresentations in 2005, the statute of limitations has run and any TILA claims fail.

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## 2. *Fair Debt Collection Procedures Act (“FDCPA”) Claim*

Plaintiffs likewise cannot raise a Fair Debt Collection Procedures Act claim, as courts have held it is inapplicable to foreclosures. *See, e.g., Cheung v. Wells Fargo Bank, N.A.*, 987 F. Supp. 2d 972, 977 (N.D. Cal. 2013).

## 3. *Real Estate Settlement Procedures Act (“RESPA”) Claim*

The Plaintiffs have set forth a RESPA claim which survives the motion to dismiss. The statute of limitations for RESPA claims is three years. 12 U.S.C. § 2614; *Padilla v. One West Bank*, No. 10-04080 CW, 2010 U.S. Dist. LEXIS 134387, at \*15 (N.D. Cal. Dec. 20, 2010). Thus only violations occurring after June 23, 2012 (three years before the complaint was filed) can survive. Plaintiffs allege they sent a Qualified Written Request to Defendants on January 15, 2015. Compl. ¶ 79. They allege requesting information on their loan balance, explanation of fees; terms and conditions of amounts due; and penalties, and that Defendants did not respond adequately. This is sufficient to set forth a plausible claim under RESPA. *See Pelayo v. Home Capital Funding*, No. 08-CV-2030 IEG (POR), 2009 U.S. Dist. LEXIS 44453, at ¶¶ 8-11 (S.D. Cal. May 22, 2009) (alleging failure to respond to Qualified Written Requests sufficient to survive a motion to dismiss). Any claims for RESPA violations occurring after June 23, 2012 survive the motion, and the Defendants’ motion is thereby **denied in part**.

## 4. *Federal Credit Rating Act*

Any potential FCRA claim cannot survive, as Plaintiffs have not alleged that any credit ratings agencies notified Defendants or what information is allegedly inaccurate. *See Wood v. Greenberry Fin. Servs., Inc.*, 907 F. Supp. 2d 1165, 1178 (D. Haw. 2012), *abrogated on other grounds*, 761 F.3d 1046 (9th Cir. 2014). Thus any claims under the FCRA are **dismissed**.

## E. *Summary of Deutsche Bank and Ocwen’s Motion to Dismiss*

For the reasons discussed above, Defendants Deutsche Bank and Ocwen’s Motion to Dismiss is **granted in part, and denied in part**. Only the Plaintiffs’



1 RESPA claims remain. However, “leave to amend [the complaint] must be granted  
2 [to the Plaintiffs] unless it is clear that the complaint’s deficiencies cannot be  
3 cured by amendment.” *Lucas v. Dep’t of Corrections*, 66 F.3d 245, 248 (9th Cir.  
4 1995). Therefore, the Plaintiffs are granted thirty days to file a first amended  
5 complaint addressing any deficiencies described above.

6 ***V. Morgan Stanley’s Motion to Dismiss, ECF No. 15***

7 Defendant Morgan Stanley has filed a separate motion to dismiss based on a  
8 corporate liability theory. Morgan Stanley argues that it cannot be held liable for  
9 allegedly illegal activities of its subsidiary, barring unusual circumstances.

10 The Court agrees. A corporation’s veil cannot be pierced absent unusual or  
11 exceptional circumstances, in which the corporate form is used to avoid legitimate  
12 legal obligations. *See Bangkok Broad. & T.V. Co. v. IPTV Corp.*, 742 F. Supp. 2d  
13 1101, 1120 (C.D. Cal. 2010); *Culinary Workers & Bartenders Union v. Gateway*  
14 *Cafe, Inc.*, 91 Wn. 2d 353, 366 (1979). Absent these circumstances, “a parent  
15 corporation . . . is not liable for the acts of its subsidiaries.” *United States v.*  
16 *Bestfoods*, 524 U.S. 51, 61 (1998).

17 The Plaintiffs do not present any evidence that Morgan Stanley is evading  
18 legitimate liabilities, or that Morgan Stanley is operating as an alter ego for Saxon  
19 Mortgage, the alleged subsidiary company. In their response, Plaintiffs state they  
20 were “under the impression that Defendant Morgan Stanley would know they were  
21 liable for the actions of Saxon Mortgage . . . .” ECF No. 19 at 6:4-5. Plaintiffs also  
22 reference a news article where Morgan Stanley was ordered by the Federal  
23 Reserve to review foreclosures conducted by Saxon Mortgage.

24 But as discussed above, there is no plausible indication on Plaintiffs’ part  
25 that Saxon Mortgage engaged in impropriety on the part of the Plaintiffs’ deed in  
26 trust. Even if there was, it would not supply the “unusual circumstances” needed  
27 to pierce the corporate veil, such as alter ego liability or avoiding legitimate  
28 obligations. Indeed, under any potential claim, the statute of limitations bars

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activities by Saxon Mortgage. Thus, Morgan Stanley's motion to dismiss is **granted**, and the claims against it are **dismissed with prejudice**. *See Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990) (a district court may deny leave to amend when any proposed amendment would be futile).

Accordingly, **IT IS HEREBY ORDERED:**

1. Defendant Deutsche Bank and Ocwen's Motion to Dismiss, ECF No. 4, is **granted in part and denied in part**, in accord with the reasoning above.

2. Defendant Morgan Stanley's Motion to Dismiss, ECF No. 15, is **granted**. Defendant Morgan Stanley is **dismissed with prejudice**.

3. Plaintiffs are granted leave to amend their complaint, and must file their first amended complaint no later than thirty days from the publication of this order.

**IT IS SO ORDERED.** The District Court Executive is hereby directed to file this Order and provide copies to counsel and pro se Plaintiffs.

**DATED** this 6th day of November, 2015.



A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

Stanley A. Bastian  
United States District Judge